



October 22, 2020

VIA ECF FILING

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Honorable Joshua D. Wolson
James A. Byrne U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

Re: Barbounis v. Middle East Forum, et al., 2:19-cv-05030

Your Honor,

As counsel for defendant The Middle East Forum (“The Forum”) in the matter *Barbounis v. Middle East Forum, et al.*, 2:19-cv-05030, we write to briefly supplement our Motion for Contempt (ECF No. 62), which was filed this morning. Further developments today deserve your attention in connection with the matters set forth in the Contempt Motion.

Moments before our Contempt Motion was filed, we received a link to a password-protected file of documents from third party vendor Cornerstone Discovery (“Cornerstone”). We did not receive the password. At this point, our filing was already in process. Timestamps on the email shows the link was sent nine minutes before our Contempt Motion was docketed.

As we outlined in our Contempt Motion, this production is the result of twenty-five search terms relevant to the Trade Secrets action provided by The Forum’s separate counsel in that action which were run across Ms. Barbounis’ phones. These search terms do not have specific relevance to this Action and were not agreed-upon with counsel in this Action nor were our document requests considered by the parties when the terms were decided.

Nonetheless, at 9:56 a.m. this morning, *after* the October 21st deadline Your Honor ordered, we received a link to documents. The email also noted that the zip file was password protected and a password would be sent by separate cover. As of 6:00pm, we have not received the password. ***Therefore, we still do not have access to the documents.***

Even if we had been properly served with accessible documents today, this is still another gross example of Ms. Barbounis’ and Mr. Carson’s inability to abide by the Court’s orders and their obligations under the Federal Rules.

Data Dump: We cannot sugarcoat it. This is a data dump. Mr. Carson dumped 8GB worth of documents on The Forum six days before the discovery deadline and one week before Ms. Barbounis’ deposition. The Forum has been forced to delay deposing Ms. Barbounis for weeks because of Mr. Carson’s repeated representations that her production was forthcoming. It is no exaggeration to say that The Forum cannot review this volume of documents and adequately prepare to take her deposition in a matter of days. Nor should The Forum be forced to do so. This mess was caused by Mr. Carson and Ms. Barbounis and it is The Forum and its

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counsel that is now severely prejudiced. Mr. Carson and his client cannot avoid their obligations to produce relevant documents under the Federal Rules by throwing a digital pile of documents over the fence and leaving his mess for The Forum and its counsel to sort out.

Incomplete Production: As stated in our Contempt Motion and as we have been telling Mr. Carson for weeks, this production will not satisfy Ms. Barbounis' obligations to respond to the request for documents served in this Action. These documents are ostensibly responsive to requests served in the Trade Secrets Action. We do not expect this production to include any supplemental documents to the production made in the Trade Secrets Action based on our discussions with Cornerstone and Mr. Carson on Tuesday. We will be able to confirm that once we receive the password and can access the documents. We do know that this document dump was not going to include certain multimedia files. Our Contempt Motion further explained that Mr. Carson has yet to review multimedia files and therefore he has essentially conceded that this production does not satisfy his obligations. The production is grossly inadequate and incomplete. The Forum is entitled to documents responsive to its requests.

Written Responses to Document Requests: There is no justifiable excuse for Mr. Carson's failure to serve responses to The Forum's document requests. Your Honor ordered Ms. Barbounis to serve written responses, *without objection*, by October 21st. We have not received these responses. This falls squarely on Ms. Barbounis and Mr. Carson and blame cannot be shifted to any third-party vendor or technical issue. It is inexcusable.

For these additional reasons and those set forth in our earlier-filed Contempt Motion, Counsel seeks the relief set forth in the Contempt Motion and any other relief Your Honor deems just and proper.

Respectfully,

COZEN O'CONNOR



By: David J. Walton

DJW:lab

CC: Seth Carson, Esq., Sidney L. Gold, Esq., and William Rieser, Esq. via ECF filing